

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

J & J Mortgages, LLP

Owner of Antenna Structure No. 1007824

Rincon, NM

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File No.: EB-FIELDWR-14-00013655

Citation No.: C201432940002

CITATION AND ORDER

Antenna Structure Lighting and Registration

Adopted: July 23, 2014**Released: July 24, 2014**

By the District Director, San Diego Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. This is an official **CITATION AND ORDER** (Citation) issued pursuant to Section 503(b)(5) of the Communications Act of 1934, as amended (Communications Act or Act),¹ to J & J Mortgages, LLP (J & J Mortgages), owner of antenna structure number 1007824 (Antenna Structure) located in Rincon, New Mexico. Specifically, J & J Mortgages is being cited for failing to: (1) observe the required Antenna Structure lighting at least once each 24 hours visually or use an automatic indicator or alarm system to detect a lighting failure; (2) have all obstruction lighting on the Antenna Structure functioning; and (3) notify the Commission immediately upon any change in ownership of the Antenna Structure; in violation of Sections 17.47(a), 17.51(b), and 17.57 of the Commission's rules (Rules), respectively.²

2. Notice of Duty to Comply With Laws: J & J Mortgages should take immediate steps to come into compliance, and to avoid any recurrence of the misconduct, including either visually observing the Antenna Structure once every 24 hours or using an automatic indicator or alarm system to detect a lighting failure; correcting any Antenna Structure obstruction lighting failure; and changing the ownership of the Antenna Structure in the Commission's antenna structure registration (ASR) database. J & J Mortgages is hereby on notice that if it subsequently engages in any conduct of the type described in this Citation, including any violation of Sections 17.47(a), 17.51(b), or 17.57 of the Rules, it may be subject to

¹ 47 U.S.C. § 503(b)(5). Section 503(b)(5) of the Act provides that a Citation is not required in the case of violations of Section 303(q) of the Act, 47 U.S.C. § 303(q), if the person/entity involved is a nonlicensee tower owner who has previously received notice of the obligations imposed by Section 303(q) from the Commission or the permittee or licensee who uses that tower. In this case, however, we are providing a Citation to J & J Mortgages because such notice may not have been previously provided. See *North Chapel Investments*, Citation and Order, 27 FCC Rcd 4813 (Enf. Bur. 2012) (citation issued to nonlicensee antenna structure owner which may not have had notice of its obligations concerning its antenna structures).

² 47 C.F.R. §§ 17.47(a), 17.51(b), 17.57.

civil and criminal penalties, including but not limited to substantial monetary fines (forfeitures). Such forfeitures may be based on both the conduct that led to this Citation and the conduct following it.³

3. Your Response Required: Pursuant to Sections 4(i), 4(j), and 403 of the Communications Act,⁴ we also direct J & J Mortgages to respond in writing, within thirty (30) calendar days after the release date of this Citation, and signed under penalty of perjury, with descriptions of the specific action(s) taken or planned to correct the violations and preclude recurrence of the violations, and also a timeline for completion of any correction action(s).

II. BACKGROUND

4. On January 22, 2014, the Commission's San Diego Office received a complaint that the Antenna Structure did not have any obstruction lighting that was functioning during the daytime and that the structure was not painted. A review of the Commission's ASR database found that the Antenna Structure was required to comply with FCC Paragraphs B, D, and H, specifically, the Antenna Structure must have high intensity obstruction lighting operating continuously, as required by Sections 17.21(a) and 17.51(b) of the Commission's Rules (Rules),⁵ with three or more high intensity light units at the top of the structure, and have three or more high intensity light units at two-thirds and at one-third of the structure's height. On the same date, it was determined that the Commission's ASR database listed Rio Grande Christian Broadcasting as the owner of the Antenna Structure, but that J & J Mortgages was the current owner of the Antenna Structure. Also, J & J Mortgages was contacted on the same date and notified of the complaint that the daytime antenna structure lighting was not functioning properly.

5. On February 13, 2014, a Letter of Inquiry (LOI) was issued to J & J Mortgages regarding the Antenna Structure.⁶ In its LOI Response, J & J Mortgages stated that it has been the owner of the Antenna Structure since 1999, that all the lighting would be repaired by the end of March, and that a monitoring device for the structure lighting was being installed.⁷ J & J Mortgages also stated that it was not aware of how often the Antenna Structure lighting was checked to insure that it was functioning properly, and that it was unable to change the Antenna Structure's owner listed in the Commission's ASR database to J & J Mortgages due to a computer error.⁸

6. On February 25, 2014, an agent from the San Diego office observed during the daytime that only one of three lights was functioning at the top of the Antenna Structure and only one of three

³ See 47 U.S.C. § 503(b)(5). See also S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977) (If a person or entity that has been issued a citation by the Commission thereafter engages in the conduct for which the citation of violation was sent, the subsequent notice of apparent liability "*would attach not only for the conduct occurring subsequently but also for the conduct for which the citation was originally sent.*") (emphasis added).

⁴ 47 U.S.C. §§ 154(i), 154(j), 403.

⁵ 47 C.F.R. §§ 17.21(a), 17.51(a).

⁶ See *Edgar Miles*, Letter of Inquiry (Feb 13, 2014) (on file in EB-FIELDWR-14-00013655) (LOI). Mr. Miles is a principal of J & J Mortgages.

⁷ Response of J & J Mortgages, LP, to San Diego Office at 1 (Apr. 7, 2014) (on file in EB-FIELDWR-14-00013655) (LOI Response). J & J Mortgages also stated that it notified the Federal Aviation Administration (FAA), pursuant to Section 17.48 of the Rules, 47 C.F.R. § 17.48, of the light outage. We remind J&J Mortgages that as the Antenna Structure owner, it must report immediately by telephone or telegraph to the nearest Flight Service Station or office of the FAA any observed or otherwise known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes.

⁸ LOI Response at 1-2.

lights was functioning at two-thirds of the Antenna Structure height. No strobe lights were observed functioning at one-third of the Antenna Structure height.

III. APPLICABLE LAW AND VIOLATIONS

7. Section 17.47(a) of the Rules requires that the lighting on an antenna structure must be observed at least once every 24 hours either visually or by using an automatic indicator or alarm system that will detect any light outages and notify the owner of any such light outage.⁹ Section 17.51(b) of the Rules requires that all high intensity and medium intensity lighting shall be exhibited continuously.¹⁰ Section 17.57 of the Rules requires the owner of an antenna structure to immediately notify the Commission upon any change in ownership information either using FCC Form 854 or by using the Commission's ASR online system.¹¹

8. The record in this case shows that J & J Mortgages stated in its LOI Response that they had not been observing the Antenna Structure lighting at least once every 24 hours either visually or by using an automatic indicator or alarm system that would detect any failure of such lights to insure that all such lights are functioning properly as required. On February 25, 2014, a San Diego Office agent observed during the daytime that only one of three lights was functioning at the top of the Antenna Structure, that only one of three lights was functioning at two-thirds of the Antenna Structure height, ground, and that no lights were working at one-third of the Antenna Structure height. Also, J & J Mortgages stated in its LOI Response that they had not updated the Commission's ASR database to indicate that it is the owner of the Antenna Structure, and as of the date of this Citation and Order, the structure is still registered with the Commission under the name of the previous owner of the structure. Based on the foregoing evidence, we find that J & J Mortgages violated Sections 17.47(a), 17.51(b), and 17.57 of the Rules.¹²

IV. REQUEST FOR INFORMATION

9. Pursuant to Sections 4(i), 4(j), and 403 of the Act,¹³ J & J Mortgages is directed to confirm in writing that it has taken the necessary measures and made the corrections to ensure that it does not continue to violate the rules discussed above, and provide the information requested below within thirty (30) calendar days after the release date of this Citation. A failure to respond in writing, or the provision of an inadequate, incomplete, or misleading response, may subject J & J Mortgages to additional sanctions.

- i. Provide the plan for repairing the required lighting. Include a time-frame for such repairs.
- ii. Provide the plan observing the antenna structure lighting at least once every 24 hours either visually or by using an automatic indicator or alarm system that will notify J & J Mortgages of a light outage on the Antenna Structure. If J & J Mortgages is using an automatic means to monitor the antenna structure lighting, provide detailed information on how a lighting outage will be detected and how J

⁹ 47 C.F.R. § 17.47(a)

¹⁰ 47 C.F.R. § 17.51(b)

¹¹ 47 C.F.R. § 17.57.

¹² 47 C.F.R. §§ 17.47 (a), 17.51(b), 17.57.

¹³ 47 U.S.C. §§ 154(i), 154(j), 403.

& J Mortgages will be notified of the outage. Include a time-frame for when an automatic monitoring system will be installed.

- iii. Provide the plan for updating the ownership information of the Antenna Structure in the Commission's ASR database either by filing FCC Form 854 or using the ASR online system. Include a copy of the completed FCC Form 854 or a copy of your online filing in J & J Mortgages' response.

V. RESPONDING TO THIS CITATION

10. In addition to the required written information described in paragraphs 3 and 9, above, J & J Mortgages may, if it so chooses, respond to this Citation—challenging the factual and legal findings herein—within thirty (30) calendar days from the release date of this Citation either through (1) a written statement, (2) a teleconference interview, or (3) a personal interview at the Commission Field Office nearest to your place of business.

11. If J & J Mortgages would like to arrange a teleconference or personal interview, please contact James T. Lyon at (858) 496-5111. Such teleconference or interview must take place within thirty (30) calendar days of the date of this Citation. If J & J Mortgages would like to submit a written response, including any supporting documentation, J & J Mortgages must send the response within thirty (30) calendar days of the date of this Citation to the contact and address provided in paragraph 12, below.

12. All written communications, including the information requested in paragraphs 3 and 9, above, should be provided to the address below.

Federal Communications Commission
San Diego District Office
4542 Ruffner Street, Suite 370
San Diego, California 92111
Re: EB-FIELDWR-14-00013655

13. Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need, and include as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least five (5) business days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to fcc504@fcc.gov or call the FCC's Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:
202-418-0530 (voice), 202-418-0432 (tty);

For accessible format materials (braille, large print, electronic files, and audio format):
202-418-0531 (voice), 202-418-7365 (tty).

14. Please be advised that it is a violation of Section 1.17 of the Rules (47 C.F.R. § 1.17) for any person or a staff member of that person to make any false or misleading written or oral statement of fact. Specifically, no person shall:

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and

(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material

factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.¹⁴

15. Further, the knowing and willful making of any false statement, or the concealment of any material fact, in reply to this Citation is punishable by fine or imprisonment under 18 U.S.C. § 1001.

16. If you violate Section 1.17 of the Rules or the criminal statute referenced above, you may be subject to further legal action, including monetary fines pursuant to Section 503 of the Act.¹⁵

17. Under the Privacy Act of 1974, 5 U.S.C. § 552a(e)(3), we are informing you that the Commission's staff will use all relevant material information before it, including information that you disclose in your interview or written statement, to determine what, if any, enforcement action is required to ensure your compliance with the Act and the Rules.

VI. FUTURE VIOLATIONS

18. If, after receipt of this Citation, J & J Mortgages again violates Sections 17.47(a), 17.51(b), or 17.57 of the Rules by engaging in conduct of the type described herein, the Commission may impose monetary forfeitures not to exceed \$15,000 for each such violation or each day of a continuing violation, and up to \$122,500 for any single act or failure to act.¹⁶ Further, as discussed above, such forfeitures may be based on both the conduct that led to the Citation and the conduct following it.¹⁷ In addition, violations of the Act or the Rules also can result in seizure of equipment through *in rem* forfeiture actions,¹⁸ as well as criminal sanctions, including imprisonment.¹⁹

VII. ORDERING CLAUSES

19. **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 403 of the Communications Act, J & J Mortgages must provide the written information requested in paragraphs 3 and 9, above. The response to the request for information must be provided in writing, signed under penalty of perjury by an authorized official at J & J Mortgages with personal knowledge of the information and representations provided in the written response, and must be received by the FCC within thirty (30) calendar days after the release date of this Citation and Order.

¹⁴ 47 C.F.R. § 1.17.

¹⁵ 47 U.S.C. § 503.

¹⁶ See 47 U.S.C. §§ 401, 501, 503; 47 C.F.R. § 1.80(b)(7). This amount is subject to further adjustment for inflation (see 47 C.F.R. § 1.80(b)(9)), and the forfeiture amount applicable to any violation will be determined based on the statutory amount designated at the time of the violation.

¹⁷ See *supra* para. 2.

¹⁸ See 47 U.S.C. § 510.

¹⁹ See 47 U.S.C. §§ 401, 501.

20. **IT IS FURTHER ORDERED** that a copy of this Citation and Order shall be sent both by First Class U.S. Mail and Certified Mail, Return Receipt Requested, to J & J Mortgages, El Paso, Texas.

FEDERAL COMMUNICATIONS COMMISSION

James T. Lyon
District Director
San Diego Office
Western Region
Enforcement Bureau